DOCUMENT RESUME

ED 102 921 HE 006 305

TITLE	Suggested Inclusions in State Legislation for Higher Education Institutions Which Wish to Name the Board of Governors as Employer. Special Report No. 14.
INSTITUTION	Academic Collective Bargaining Information Service, Washington, D.C.
SPONS AGENCY	American Association of State Colleges and Universities, Washington, D.C.; Association of American Colleges, Washington, D.C.; Carnegie Corp. of New York, N.Y.; National Association of State Universities and Land Grant Colleges, Washington, D.C.
PUB DATE	Feb 75
NOTE	6p.
EDRS PRICE	MF-$0.76 HC-$1.58 PLUS POSTAGE
DESCRIPTORS	*Arbitration; *Collective Bargaining; Community Colleges; *Employer Employee Relationship; *Higher Education; State Colleges; State Legislation; State Universities; *Unions

ABSTRACT

This is a staff paper in response to requests from administrators and trustees in about 11 states where legislatures are considering bills that will enable faculties to unionize for purposes of collective bargaining. Perhaps the most important question posed by such legislation is "Who is the employer for the state university, a state college, or a community college?" When the higher education community permits this question to go unanswered, the uniformed legislature often permits a state of hiatus within the university by requiring faculty to bargain with someone such as a commissioner of administration. In addition, impasses and grievances may be settled outside the authority of the university. This paper offers suggestions for shaping legislation that would be beneficial to trustees and others interested in the integrity and ability of institutions to govern themselves. (Author/PG)

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SPECIAL REPORT #14
February 1975

SUGGESTED INCLUSIONS IN STATE LEGISLATION FOR HIGHER EDUCATION INSTITUTIONS WHICH WISH TO NAME THE

BOARD OF GOVERNORS
as
EMPLOYER

This is a staff paper in response to requests from administrators and trustees in about 11 states where legislatures are considering bills that will enable faculties to unionize for purposes of collective bargaining. Perhaps the most important question posed by such legislation is "Who is the employer for the state university, a state college, or a community college?" When the higher education community permits this question to go unanswered, the uninformed legislature often permits a state agent outside the university to be the employer. This may create a hiatus within the university by requiring faculty to bargain with someone such as a commissioner of administration. In addition, impasses and grievances may be settled outside the authority of the university. Faculty and students as well as trustees and administrators find that their ability to govern "collegially" may be seriously weakened. Some institutions want the board of governors to be named as the "employer" for purposes of bargaining. If the law so designates, it should also, for purposes of consistency, contain a number of other clauses and sections. This paper is intended to offer <u>one</u> set of suggestions for shaping legislation that would be beneficial to trustees and others interested in the integrity and ability of institutions to govern themselves.

These suggestions are made after consulting with specialists in labor relations, trustees, legislators, and university administrators. It is important to understand that almost no one agrees fully on the suggestions made. Each national union organization has its own model legislation which is worthy of review.

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III. Agreement between public employer and employees
a) agreements shall not become effective until approved by the board of governors and the legislature.

IV. Public Employee Relations Board
a) shall provide mediation and fact-finding services (free, if possible).
b) shall arbitrate impasses and/or grievances.
c) shall have right to appoint special assistants with training and understanding in higher education collective negotiations for purposes of conciliating and reviewing cases in higher education.
d) shall determine representation units for higher education after consultation with board of governors, chief executive officer and union representatives.
e) shall resolve disputes arising from improper practice charges.
f) shall make studies (and employ appropriate research personnel) as to the effectiveness of CB for public employees (in higher education).

V. Determination of Representation Status
a) PERB shall have sole responsibility for establishing rules and regulations governing size and membership of representational units: for supervising elections; and for resolving disputes pertaining thereto.

VI. Rights accompanying certification of representational unit
a) shall be in accordance to rules made by PERB which may extend exclusive bargaining rights to a single organization after an election, or may provide for coalition bargaining in accordance to voting preference during the election.

VII. Resolution of disputes
a) Public Employee Relations Board shall provide mediation and fact-finding services without cost at the request of either party.
b) Only after all attempts at resolving the impasse through mediation and fact-finding have failed, and at the request of either party, PERB shall have sole authority to provide arbitration services eventuating in final binding decision by PERB.
c) Items in a negotiated contract requiring an additional appropriation of funds by a legislative body shall not be effective until approved by the board of governors and by the legislative body appropriating said funds.

VIII. Unfair Labor Practices (Include the usual ULP).

IX. Prohibition of Strikes (yes)
a) Any person perceived, after fair hearing by the chief administrative officer or his surrogate, of having participated in a strike or other work stoppage shall be permanently removed from the public payroll unless the board of governors, upon

Prohibition of strikes (continued)
recommendation of the chief administrator, approves re-employment of said person. If and when reemployed, said person shall 1) if tenured be placed on a probationary appointment for a minimum of 24 months; if non-tenured, meet a full probationary period extended by 24 months before being considered for tenure; and 2) lose a day's pay for each day on strike (or partial strike); and 3) shall lose membership in the union for a period of 24 months, specifically losing all rights to vote, to serve on union committees, or be a union officer, formally or informally.
b) A union participating in a strike shall be decertified.

X. Injunctive Relief (Yes; shall be available to chief administrative officer when threatened by a strike or work stoppage.)

XI. Judicial Review and Enforcement
a) Orders of the PERB shall be final unless reversed or modified by judicial review. Only matters of procedural due process shall be reviewable in civil court.

XII. Management and Confidential Employees
a) include all "administrators" excluded under "public employee," II (4).

XIII. Elections
a) Shall be scheduled and supervised by PERB.
b) Election shall be in two steps: 1) The first shall be a referendum containing only two choices, namely, a faculty union or no faculty union; and 2) the second ballot shall contain a list of all agents presenting petitions containing signatures of 10% or more of the eligible voters. (There will be no second ballot unless a majority of eligible voters on the first ballot is for unionization.)
c) The PERB, after consultation with the board of governors and the unions shall determine after each election whether or not there shall be a single exclusive bargaining agent (as in the case where one agent receives a very large percentage of the votes) or whether there shall be coalition bargaining (as in a case where no agent receives more than 50% of the vote).

XIV. Unions
a) Any organization practicing "discrimination" shall be ineligible to participate in elections or negotiations.
b) Each participating organization must establish a grievance procedure whereby any member can have complaints against union officers or union action openly and quickly reviewed and settled.
c) Each participating organization shall keep up-to-date records of members, income, dispursements, officers, meetings, etc. and make them available on a semi-annual basis.
d) Each participating union, since its members are professionals responsible for sharing in governance, supercisory and administrative duties, shall establish grievance procedures

Unions (continued)
whereby management may call to the attention of the members unethical or improper conduct of union officials which may be detrimental to the institution, the management, or to the union members themselves.

XV. Management Rights

a) Responsibilities and authority of educational executives as stated in the education law shall be non-delegable and, therefore not negotiable.

b) Management shall establish procedures for disciplining any faculty member not conscientiously or competently carrying out his assigned duties. Appropriate policies governing the conduct of hearings and appeals shall be established by the board of governors together with appropriate penalties.

c) Management shall have the right at all times to express freely its opinion as to election issues, the qualifications of competing agencies, union activities, bargaining problems, salary issues, etc.

XVI. Student Rights

a) Students shall be invited by both management and employees' union to participate in collective negotiations activities. The manner in which they participate shall be determined by the trustees after hearing and reviewing testimony from the three parties.

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Suggested Inclusions in State Legislation for Higher Education Institutions Which Wish to Name the Board of Governors as Employer

Note: These suggestions are based on the assumption that the Board of Governors should act as the employer on behalf of the government.

I. Statement of policy - (purpose). Include the usual statement, e.g. "...promote harmonious and cooperative relationships... and orderly and uninterrupted government services..." This is important for purposes of evaluation and future amendments.

II. Definitions.

(1) "public employer" - for higher education: Board of Trustees (or regents)

(2) "terms and conditions of employment" (scope of bargaining)

Exclude: a) responsibilities of trustees and chief executive officer as stated in the education law.

b) final responsibility for making decisions re employment, reemployment, promotion and merit salary increases of professional personnel in CB unit. (This should be responsibility of the employer.)

c) final responsibility for making decisions about planning, budgeting, and allocation of human and material resources except those decisions negotiated about salaries and fringe benefits. (This should be the responsibility of the board of trustees.)

d) final responsibility for approving educational policies formulated through campus processes.

Include: standards of productivity and performance of employees.

(3) "employee organization" - include a coalition of employee organizational representatives as an eligible type of body to negotiate on behalf of all employees.

Exclude: organizations that discriminate on any basis.

(4) "public employee" - exclude part time faculty who teach a total of fewer than 14 credit hours during the two terms immediately preceding the election; or who have not been employed during each of the four consecutive terms (excluding summer terms) immediately prior to the election.

Exclude: administrators who a) make effective decisions relative to hiring, firing, promoting, increasing salaries of, scheduling work assignments for, or disciplining, employees in the unit; or who allocate funds for expenditures in behalf of unit employees; or who help negotiate or administer the contract.